

**REMARKS**

Claims 25, 26, 29 and 30 were pending at the time of the Office Action dated November 29, 2007. In this response, Claims 25 and 29 are amended, Claim 26 is cancelled and Claims 43-56 are added, including new independent Claim 53. The Office Action dated November 29, 2007 in this Application has been carefully considered. **An interview was held on May 13, 2008 with the Examiner, during which the Examiner suggested that the amendments to Claim 25 proposed above would overcome rejections directed at Claim 25.** Accordingly, the above amendments and the following remarks are presented in a sincere attempt to place this Application in condition for allowance. Reconsideration of the Application in light of the amendments and remarks is respectfully requested.

**1. Claim Rejections – 35 U.S.C. § 102(e)**

The Examiner rejected claims 25, 29 and 30 under 35 U.S.C. § 102(e) as being anticipated by Boehm, Jr., et al. (US 2004/0039384). Applicants respectfully assert that these rejections are overcome.

For convenience, amended claim 25 is reproduced below:

25. A medical implant comprising:  
a first bone anchor having a first proximal head and a first distal threaded shank;  
a second bone anchor having a second proximal head and a second distal threaded shank; and  
a brace assembly comprising:  
a shell coupled to the first proximal head;  
a brace having a longitudinal axis and a slot longitudinally displaced along the brace;  
a pair of bearings displaced on opposite sides of the brace and positioned between the brace and the shell, each of the pair of bearings riding within the slot longitudinally displaced along the brace, wherein the bearings allow for slidingly

adjusting and pivoting the brace relative to the first proximal head along at least a portion of a longitudinal length of the brace.

The U.S. Patent and Trademark Office provides in MPEP § 2131 that:

*"[t]o anticipate a claim, the reference must teach every element of the claim...."*

Applicants respectfully submit that Boehm does not teach all of the elements of amended Claim 25. Specifically, Boehm fails to disclose or suggest a "a pair of bearings displaced on opposite sides of the brace... each of the pair of bearings riding within the slot longitudinally displaced along the brace, wherein the bearings allow for slidingly adjusting and pivoting the brace relative to the first proximal head along at least a portion of a longitudinal length of the brace."

The Examiner points to reference numeral 120 in Boehm to suggest that Boehm teaches a "means for pivoting the brace from a first position to a second position" and points to reference numerals 128 and 130 in Boehm to suggest that Boehm teaches a "means for slidingly adjusting the means for pivoting." Boehm does not teach or suggest, however, that these features are a pair of bearings riding within longitudinal slots displaced along a brace where the bearings allow for slidingly adjusting and pivoting the brace. In the Examiner interview of May 13, 2008, the Examiner agreed that the proposed amendments, now represented here in Claim 25, overcome the rejection of Claim 25 based on 35 U.S.C. § 102(e). Accordingly, Applicants respectfully request that the rejections be withdrawn.

Previously presented Claim 29, 30 and new Claims 43 - 52 properly depend from amended Claim 25 and recite further limitations in combination with the novel elements of Claim 25. Therefore, the allowance of Claims 25, 29, 30, and 43 - 52 is respectfully requested.

New Claim 53 has been added along with Claims 54-56 depending from Claim 53.

Claim 53 is distinguishable over the cited references for at least some of the same reasons as Claim 25. For example, the reference Boehm does not teach or suggest in combination with the other cited references “a pair of bearings displaced on opposite sides of the brace, each of the pair of bearings riding within a slot longitudinally displaced along the brace.” No new matter has been introduced by Claim 53 and such claims are supported by the specification. New Claims 54-56 depend from Claim 53 and recite further limitations in combination with the novel elements of Claim 53. Also, Applicant submits that these claims do not raise new issues for examination so that no further search is required. Therefore, Applicants respectfully submit that Claims 53-56 should be allowed over the cited references.

## **2. Conclusion**

Applicants have now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request full allowance of Claims 25, 29, 30, and 43 – 56.

Applicants would like to bring to the attention of the Examiner for consideration, an Information Disclosure Statement filed concurrently with this response.

Applicants request continued examination together with an extension of time for making this reply and hereby authorize the Director to charge the required fees to Deposit Account No. 50-0605 of CARR LLP. Applicants do not believe that any other fees are due; however, in the event that any other fees are due, the Director is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP.

Should the Examiner deem that any further amendment is desirable to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

CARR LLP

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